Office-Supreme Court, U.S.
FILED
OCT 5 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER 1963 TERM.

No. 457

GEORGE WOJCIK,

Petitioner

vs.

BURTON PALMER ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION FOR RESPONDENTS JOHN C. MELANIPHY, CORPORATION COUNSEL OF THE CITY OF CHICAGO, AND CITY OF CHICAGO, A MUNICIPAL CORPORATION.

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois (60602),
Attorney for Respondents John C. Melaniphy, Corporation Counsel of the City of Chicago, and City of Chicago, a municipal corporation.

SYDNEY R. DREBIN,
HARRY H. POLLACK,
Assistant Corporation Counsel
Of Counsel.

R. R. DONNELLEY & SONS COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 457

GEORGE WOJCIK, *Petitioner*,

vs.

BURTON PALMER ET AL., *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION FOR RESPONDENTS JOHN C. MELANIPHY, CORPORATION COUNSEL OF THE CITY OF CHICAGO, AND CITY OF CHICAGO, A MUNICIPAL CORPORATION.

The respondents John C. Melaniphy and City of Chicago oppose the petition for certiorari on the following grounds:

I.

The decision of the Court of Appeals clearly shows that petitioner has no cause of action.

The decision of the Court of Appeals (Petition, p. 3a, appendix B, 318 F. 2d 171) shows beyond any doubt that petitioner has no cause of action herein.

Respondents John C. Melaniphy and City of Chicago submit that such decision makes unnecessary any argument to show that the petition for certiorari should be denied.

II.

Respondents John C. Melaniphy and City of Chicago are not proper parties herein.

In addition to the fact that petitioner has no cause of action herein, respondents John C. Melaniphy and City of Chicago argued below that they are not proper parties herein. The Court of Appeals never ruled on said argument but it is germane to said respondents' opposition to the petition for certiorari.

The gravamen of petitioner's case seems to be that he is charged with the violation of a traffic ordinance of the City of Chicago; that such ordinance violation case will be tried as a civil action than as a criminal case because of rulings of the Illinois courts of review; that such trial will deprive him of rights guaranteed by the Fourteenth Amendment; and that said deprivation of rights gives him a cause of action under the Civil Rights Act, 42 U. S. C. sec. 1983 (Petition, p. 2-6).

Aside from the fact of whether or not petitioner has a cause of action herein, such cause of action would be based on the fact that the Illinois courts of review have held that ordinance violation cases are tried as civil matters.

Such being the case, petitioner's quarrel is with the Illinois courts of review and not with respondents John C. Melaniphy, corporation counsel of the City of Chicago, and City of Chicago, a municipal corporation.

Until such time as the Illinois courts of review change the law governing the trial of ordinance enforcement cases, these respondents will be obliged, as is every Illinois municipality and its attorney, to try such cases as civil matters.

The rules of procedure under which a case is tried is determined by the court trying same and not by the litigants. Respondents John C. Melaniphy and City of Chicago, in the traffic case now pending against the petitioner, are merely a litigant and its attorney.

In addition to the fact that Illinois courts of review have held that ordinance violation cases are tried as civil matters, section 49 of an act in relation to a municipal court in the City of Chicago (Ill. Rev. Stat. 1961, chap. 37, par. 405), provides: "That the practice in the Municipal Court in cases of the fifth class shall be the same, as near as may be, as is herein prescribed for civil cases of the fourth class mentioned in section two (2) of this act, excepting as follows" [there then follows provisions pertaining to arrest, etc. in cases of the fifth class].

Section 2 of said act (Ill. Rev. Stat. 1961, chap. 37, par. 357), designates cases of the fifth class to include all quasi-criminal actions except bastardy cases. Quasi-criminal actions include ordinance enforcement cases.

Thus, under the rulings of Illinois courts of review and the aforesaid municipal court act, ordinance violation cases are tried as civil matters and not because of anything respondents John C. Melaniphy and City of Chicago have done or have control over.

III.

The action herein does not involve the Civil Rights Act or the Fourteenth Amendment.

As hereinbefore shown, petitioner's action is founded on the proposition that because the traffic ordinance violation case pending against him in the Municipal Court of Chicago will be tried as a civil matter, he will be deprived of the process of law guaranteed by the Fourteenth Amend-

ment and the Civil Rights Act because such case should only be tried as a criminal matter.

Aside from the fact that petitioner's method of securing the rights he claims he has by virtue of the Fourteenth Amendment and the Civil Rights Act is erroneous, and so shown by the opinion of the Court of Appeals, there is no merit in petitioner's contention.

The penalty for the violation of the traffic ordinance with which petitioner is charged is pecuniary.

The fact that a defendant who does not pay such assessed pecuniary penalty must work it out in jail does not alter the fact that the penalty is pecuniary.

The commitment to jail to work out the pecuniary penalty is not a deprivation of due process of law. 6 McQuillin, Mun. Corps. sec. 17.06, p. 355 (3rd ed. 1949).

In *United States* v. *Reaves*, 232 U. S. 37 (1914), the action was for a penalty for violation of the Alien Immigration Act. Said Act designated a violation thereof as a misdemeanor. The defendant contended that the case had to be tried as a criminal rather than as a civil action. In holding against such contention, this court said (p. 46):

> "It is a necessary conclusion from these cases [cases cited by this court to support its holding] (1) that, as respects a pecuniary penalty for the commission of a public offense, Congress competently may authorize, and in this instance has authorized, the enforcement of such penalty by means of a criminal prosecution or a civil action; (2) that the present action is a civil one and appropriate under the statute; and (3) that, if not directed otherwise, such an action is to be conducted and determined according to the same rules and with the same incidents as are other civil actions.
>
> "It is of no moment in this case that the act penalized, which theretofore was declared unlawful and styled an offense, was by the statute of 1907 denominated a misdemeanor, for the purpose in that, as was

explained in *United States v. Stevenson*, was merely to make clear the Government's alternative right to prosecute as for a crime."

This court further said (p. 47):

> ". . . And while in a strictly criminal prosecution the jury may not return a verdict against the defendant unless the evidence establishes his guilt beyond a reasonable doubt, in civil actions it is the duty of the jury to resolve the issues of fact according to a reasonable preponderance of the evidence, and this although they may involve a penalized or criminal act."

This court quoted from *Robeson v. Burnham*, 124 Mass. 277, as follows (232 U. S. at 49):

> "The rule of evidence requiring proof beyond a reasonable doubt is generally applicable only in strictly criminal proceedings. It is founded upon the reason that a greater degree of probability should be required in criminal cases, which affect life or liberty, than may safely be adopted in cases where civil rights only are ascertained."

This court followed the foregoing case in *Ex Parte Quirin*, 317 U. S. 1, 40 (1940).

Just as Congress in *United States v. Regan*, 232 U. S. 37 (1914), authorized a civil suit for the recovery of a penalty, the Illinois Legislature, as hereinbefore shown, by sections 2 and 49 of an act in relation to a municipal court in the City of Chicago (Ill. Rev. Stat. 1961, chap. 37, pars. 357, 405) has authorized a civil suit for the recovery of a penalty in an ordinance enforcement case.

9 McQuillin, Mun. Corps. sec. 27.06, p. 555 (3rd ed. 1950), states:

> "The weight of judicial authority declares that the prosecution [of an ordinance violation] is in the nature of a civil action for the recovery of a debt."

Absent specific statutory provisions requiring that an ordinance fixing a pecuniary penalty for a violation thereof, must be tried as a criminal action, there is no question that under Illinois law, Federal law, and the weight of authority, a suit for such penalty is a civil one.

Conclusion.

The decision of the Court of Appeals is correct and in accord with the decisions of this court. There is no conflict of authority, nor any substantial Federal question raised by the petition herein. Said petition shows no cause of action. It should be denied.

Respectfully submitted,

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago.
Attorney for Respondents John C. Melaniphy and City of Chicago.

SYDNEY R. DREBIN,
HARRY H. POLLACK,
Assistant Corporation Counsel.
Of Counsel.